

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 JOSHUA H. CRITTENDON,

Case No.: 2:18-cv-02374-APG-NJK

4 Petitioner

Order

5 v.

6 BRIAN WILLIAMS, et al.,

7 Respondents

8 Petitioner Joshua H. Crittendon has submitted a 28 U.S.C. § 2254 habeas corpus petition
9 but has failed to pay the filing fee or file an application to proceed in forma pauperis.

10 Accordingly, this matter has not been properly commenced. 28 U.S.C. § 1915(a)(2) and Local
11 Rule LSR1-2.

12 Thus, the present action will be dismissed without prejudice to the filing of a new petition
13 in a new action with either the \$5.00 filing fee or a completed application to proceed in forma
14 pauperis on the proper form with both an inmate account statement for the past six months and a
15 properly executed financial certificate.

16 Further, petitioner indicates on the face of his petition that his direct appeal is pending
17 before the Nevada Supreme Court (ECF No. 1-1, p. 1; see also Nevada Supreme Court Case No.
18 75845). A federal court will not grant a state prisoner's petition for habeas relief until the
19 prisoner has exhausted his available state remedies for all claims raised. *Rose v. Lundy*, 455 U.S.
20 509 (1982); 28 U.S.C. § 2254(b). A petitioner must give the state courts a fair opportunity to act
21 on each of his claims before he presents those claims in a federal habeas petition. *O'Sullivan v.*
22 *Boerckel*, 526 U.S. 838, 844 (1999); *see also Duncan v. Henry*, 513 U.S. 364, 365 (1995). A
23 claim remains unexhausted until the petitioner has given the highest available state court the

1 opportunity to consider the claim through direct appeal or state collateral review proceedings.

2 *See Casey v. Moore*, 386 F.3d 896, 916 (9th Cir. 2004); *Garrison v. McCarthy*, 653 F.2d 374,
3 376 (9th Cir. 1981).

4 As indicated by both the petitioner and the state court docket, petitioner is currently
5 pursuing state-court relief, and therefore, his petition is unexhausted. It does not appear from the
6 papers presented that a dismissal without prejudice will materially affect a later analysis of any
7 timeliness issue with regard to a new action filed in a timely manner after petitioner has
8 exhausted all available state remedies. Petitioner at all times remains responsible for properly
9 exhausting his claims, for calculating the running of the federal limitation period as applied to his
10 case, and for properly commencing a timely-filed federal habeas action.

11 **IT IS THEREFORE ORDERED** that the Clerk shall **DETACH** and **FILE** the petition
12 (ECF No. 1-1).

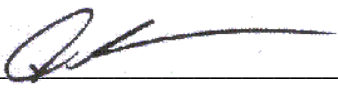
13 **IT IS FURTHER ORDERED** that this action is **DISMISSED** without prejudice to the
14 filing of a new petition in a new action with a properly completed application form to proceed in
15 forma pauperis.

16 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**, as jurists of
17 reason would not find the court's dismissal of this improperly commenced action without
18 prejudice to be debatable or incorrect.

1 **IT IS FURTHER ORDERED** that the Clerk shall send petitioner two copies each of an
2 application form to proceed in forma pauperis for incarcerated persons and a noncapital Section
3 2254 habeas petition form, one copy of the instructions for each form, and a copy of the papers
4 that he submitted in this action.

5 **IT IS FURTHER ORDERED** that the Clerk shall **ENTER JUDGMENT** accordingly
6 and close this case.

7 Dated: January 14, 2019

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10 U.S. District Judge Andrew P. Gordon
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